Supreme Court, U. S.
FILED
MAY 9 1979
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1978

NO. 78-1396

LOUIS CHARBONNET, III, ET AL.,

versus

HENRY BRADEN, IV., ET AL.,

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

MOTION TO AFFIRM

MURRAY, MURRAY, ELLIS, BRADEN and LANDRY
A Professional Law Corporation
STEPHEN B. MURRAY
W. GLENN BURNS
612 Gravier Street
New Orleans, Louisiana 70130

DOUGLAS, NABONNE AND WILKERSON
RONALD P. NABONNE
418 Common Street
New Orleans, Louisiana 70130

Attorneys for Appellants

A B Letter Service, Inc., 327 Chartres St., New Orleans, La. (504) 581-5555

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

NO.

LOUIS CHARBONNET, III, ET AL.,

VERSUS

HENRY BRADEN, IV., ET AL.,

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

MOTION TO AFFIRM

Pursuant to paragraph 1(c) of Rule 16 of the Revised Rules of this Court, the defendant/appellee Henry Braden, IV, moves that the judgment of the district court be affirmed.

QUESTION PRESENTED

Whether the three-judge district court correctly held that the technical violation of Section 5 of the Voting Rights Act warranted the drastic relief requested by petitioners, i.e., the declaration of the election as null and the holding of another special election.

STATEMENT

This is an election contest dealing with a special election to fill the unexpired term of Sidney Barthelemy who was the only black state Senator in Louisiana. The contestants, ap-

pellant Louis Charbonnet, III and appellee Henry Braden, IV presented a unique example of change in the new south in that they were both black and the winner would replace the only black State Senator. The particular problem with this election dealt with a change in a polling place in Ward 7 Precinct 6 of New Orleans.

After the primary election the poll was moved at the request of the private owner of the polling place a distance of ten to twelve blocks to Rivers Frederick School. This location was outside of Precinct 6 but in the same neighborhood.

On March 17, 1978, a city official sent a letter to city and election officials notifying them of the change. The office of the City Attorney of New Orleans notified the Attorney General of the change of March 17, 1978 for the election of April 1, 1978. This correspondence, postmarked March 30, 1978, was received by the Attorney General after the election on April 3, 1978.

It was stipulated in the lower court that there was no racial motivation in the moving of the poll.

ARGUMENT

Appellant in this case requests the most drastic of all remedies. Appellant wants either a new election *limited to Ward 7 Precinct 6*, or an entire new election. The setting aside of a completed election is required *only* upon a findings by the Court that "gross and indefensible *racially* discriminatory practices were employed in the election." (emphasis added) *Perkins v. Mathews*, 400 U.S. 379, 91 S.Ct. 421, 27 L. Ed. 2d 476 (1971).

Appellant suggests racially discriminatory effect. The record indicates something else. The appellate submitted depositions of sixteen voters in support of racial discrimination. Of the sixteen people, one actually voted, three did not go to the old location at all, seven knew of the change but found it inconvenient to vote at the new poll and five testified that they went to the old location but were unaware of the change and did not vote. This is not discrimination, this is apathy.

Appellant further states that appellee was the clear choice of the white voters and that appellant drew his support from the black community. Both candidates are black. Choices of voters are many times for reasons other than race. Race was not and could not have been an issue in the election. Voters choice in this election was political, not racial.

CONCLUSION

For the foregoing reasons, we respectfully submit that the questions prestated by appellants are clearly insubstantial and that the judgment of the district court should be affirmed.

MURRAY, MURRAY, ELLIS,
BRADEN AND LANDRY

STEPHEN B. MURRAY
Attorney for Defendant
612 Gravier Street
New Orleans, Louisiana 70130
504/ 581-3141

W. GLENN BURNS

DOUGLAS, NABONNE AND
WILKERSON

RONALD P. NABONNE
418 Common Street
New Orleans, Louisiana 70130
504/523-5197

CERTIFICATE OF SERVICE

I, hereby certify that three (3) copies of the foregoing Motion to Affirm have been served on Gibson Tucker, Jr., 710 Carondelet Street, New Orleans, Louisiana; Gilbert V. Andry, III, 710 Carondelet Street, New Orleans, Louisiana; Jerald N. Andry, 710 Carondelet Street, New Orleans, Louisiana; John A. Shea, 822 Perdido Street, New Orleans, Louisiana, and Donald Ensenat, 234 Loyola Building, New Orleans, Louisiana, this 7th day of May, 1979.

STEPHEN B. MURRAY

W. GLENN BURNS

RONALD P. NABONNE